



## INTERIOR BOARD OF INDIAN APPEALS

Ruth Vedolla, Eddie Vedolla, Beatrice Vedolla, Elinor Treppa, and Ari-El Treppa v. Acting  
Pacific Regional Director, Bureau of Indian Affairs

43 IBIA 151 (06/23/2006)



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
801 NORTH QUINCY STREET  
SUITE 300  
ARLINGTON, VA 22203

RUTH VEDOLLA, EDDIE VEDOLLA,	:	Order Dismissing Appeal for Lack
BEATRICE VEDOLLA, ELINOR	:	of Jurisdiction and Referring
TREPPA, and ARI-EL TREPPA,	:	Matter to Assistant Secretary -
Appellants,	:	Indian Affairs
	:	
v.	:	
	:	Docket No. IBIA 04-145-A
ACTING PACIFIC REGIONAL	:	
DIRECTOR, BUREAU OF INDIAN	:	
AFFAIRS,	:	
Appellee.	:	June 23, 2006

Ruth Vedolla, Eddie Vedolla, Beatrice Vedolla, Elinor Treppa, and Ari-El Treppa (Appellants) appeal from a July 21, 2004 decision of the Acting Pacific Regional Director, Bureau of Indian Affairs (Regional Director; BIA). The Regional Director declined to intervene in a membership dispute within the Guidiville Rancheria of California (Tribe), and remanded the matter to the Tribe for further consideration of Appellants' claim that they were wrongfully disenrolled from the Tribe. For the reasons stated below, the Board dismisses this appeal for lack of jurisdiction, and refers it to the Assistant Secretary - Indian Affairs for consideration, as appropriate.

### Background

In 1965, the Federal government purported to terminate its relationship with the Tribe and its members pursuant to the California Rancheria Act of August 18, 1958, Pub. L. No. 85-671, 72 Stat. 619, as amended by the Act of August 11, 1964, Pub. L. No. 88-419, 78 Stat. 390. See 30 Fed. Reg. 11,330 (Sept. 3, 1965). The Tribe contested the termination, and in 1991 the Federal government settled litigation involving the Tribe and reinstated the status and rights of the Tribe and its members. See 57 Fed. Reg. 5214 (Feb. 12, 1992) (Notice of Reinstatement); Corrected Order for Entry of Judgment and Judgment, Scotts Valley Band of Pomo Indians of the Sugar Bowl Rancheria v. United States of America, Civ. No. C-86-3660 WWS (N.D. Calif. Sept. 6, 1991) (Entering Mar. 15, 1991 Stipulation for Entry of Judgment).

In 1990, before the Federal relationship with the Tribe was formally restored, Appellants petitioned for enrollment as members. Appellants are descendants of Jesse Elliot, one of the Indians of the Guidiville Rancheria who was listed on the notice of termination in 1965. On June 29, 1990, the Tribe approved Appellants for enrollment in the Tribe, and Appellants apparently participated as voting members of the Tribe following their enrollment.

On or about April 24, 2003, the Tribal Council removed Appellants from the tribal roll. The Tribal Council apparently concluded that Appellants had not been eligible for enrollment in the Tribe based on a finding that at the time of their enrollment in the Tribe, Appellants had been enrolled in the Pinoleville Rancheria of Pomo Indians and a draft tribal constitution prohibited dual enrollment.

On May 5, 2003, Appellant Eddie Vedolla wrote to Tribal Chairperson Merlene Sanchez challenging the “decision to disenroll [Appellants] from the [Tribe’s] membership rolls.” Vedolla requested a hearing. Sanchez responded, denying the request for a hearing. Sanchez asserted that the rights claimed by Appellants “were never perfected with valid enrollment” in the Tribe, and that Appellants’ claim that they “were disenrolled is invalid, as [they] were never enrolled; [their] names were simply removed from the roll as required by the Guidiville Indian Rancheria Tribal Constitution.” May 23, 2003 Letter from Merlene Sanchez to Eddie Vedolla.

On September 2, 2003, Appellants wrote to the Regional Director, requesting that BIA “intervene to ensure the petitioners’ membership rights” in the Tribe and seeking a “declaration of membership entitlement.” Sept. 2, 2003 Letter from Appellants to Regional Director at 1. Appellants claimed that their “membership entitlement rights were terminated” by the Tribal Council’s “disenrollment decision” on April 24, 2003. *Id.* at 1, 3. Appellants argued that the Tribal Council’s action to remove Appellants from membership in the Tribe was illegal because they were entitled to membership based on the Scotts Valley stipulated judgment and because they had relinquished their membership in Pinoleville Rancheria before they had enrolled in the Tribe. Appellants asserted that BIA “has a legal obligation to intervene \* \* \* to assure that [they] \* \* \* are afforded full participatory rights

in the reorganization of the Tribe.” Id. at 13. <sup>1/</sup> Appellants also argued that the Tribe had denied them due process, in violation of the Indian Civil Rights Act (ICRA), 25 U.S.C. § 1302. <sup>2/</sup>

The Regional Director responded with her July 21, 2004 decision, which is the subject of this appeal. The Regional Director concluded that “[t]his is a tribal dispute at the moment,” Decision at 7, and stated that “Bureau policy has been to avoid interfering in membership disputes” and to refrain from becoming involved in internal tribal disputes absent some clear necessity, such as maintaining government-to-government relations, id. at 2. Because she concluded that the situation did not implicate government-to-government relations, she declined to intervene in the dispute at the present time, and remanded the enrollment dispute back to the Tribe for further deliberation on Appellants’ claims. The Regional Director also stated, however, that the dispute “could possibly evolve into \* \* \* a problem [concerning government-to-government relations] down the line in which case it might be necessary for [BIA] to intervene.” Id. at 7. The Regional Director expressed concern that “there may be serious questions as to whether [Appellants] were afforded due process and equal protection in accordance with [ICRA],” id. at 6, and “strongly suggest[ed] that the Tribe reconsider all the facts in this case and re-evaluate its position,” id. at 7.

Appellants appealed to the Board. The Board ordered briefing on whether we have jurisdiction over this appeal. Appellants and the Tribe filed briefs. <sup>3/</sup>

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<sup>1/</sup> Appellants relied on paragraph 2 of the stipulation for entry of judgment in Scotts Valley, which provided, “[f]ederal defendants agree that, except as otherwise provided in this stipulation and prior judicial determinations, the distributees and dependent members of the Scotts Valley and Guidiville Rancherias and their lineal descendants, will have the individual and collective status and rights, including the rights to organize for their common welfare and to govern their affairs, which they had prior to termination.”

<sup>2/</sup> On May 6, 2004, the Board received an appeal from Appellants, filed pursuant to 25 C.F.R. § 2.8, based on the failure of the Regional Director to issue a decision in response to their September 2, 2003 letter. On June 1, 2004, Appellants withdrew that appeal based on their receipt of a May 10, 2004 letter from the Regional Director providing a timetable for issuing a decision. See Treppa v. Acting Pacific Regional Director, 40 IBIA 35 (2004) (dismissing appeal).

<sup>3/</sup> On January 24, 2006, the Tribal Council issued a decision upholding its April 24, 2003 decision.

## Discussion

Subsection 4.330(a) of 43 C.F.R. describes the general jurisdiction of the Board to review administrative actions or decisions of BIA officials. Subsection 4.330(b) then provides in relevant part: “Except as otherwise permitted by the Secretary or the Assistant Secretary - Indian Affairs by special delegation or request, the Board shall not adjudicate: (1) Tribal enrollment disputes; \* \* \*.” 4/

Relying both on the exclusion in 43 C.F.R. § 4.330(b) and the separate appeal process in 25 C.F.R. Part 62 governing the appeal of certain enrollment actions to the Assistant Secretary, the Board has held that to the extent that tribal enrollment disputes are within the jurisdiction of the Department of the Interior, they are within the jurisdiction of the Assistant Secretary - Indian Affairs, and not the Board. See, e.g., King v. Portland Area Director, 31 IBIA 56 (1997) (dismissing appeal concerning “request for a membership determination as a member of the Samish Indian Tribe” and referring matter to the Assistant Secretary); Walsh v. Acting Eastern Area Director, 30 IBIA 180 (1997) (dismissing appeal concerning the development of a proposed final base membership roll for the Catawba Indian Tribe of South Carolina and referring matter to the Assistant Secretary); Deardorff v. Acting Portland Area Director, 18 IBIA 411 (1990) (dismissing appeal from BIA decision that certain individuals were qualified to be enrolled in the Crow Creek Band of Umpqua Tribe of Indians and referring matter to the Assistant Secretary).

Even when it is not clear that an appeal would fall within the scope of Part 62, the Board has relied on subsection 4.330(b) to dismiss and refer the matter to the Assistant Secretary. See King, 31 IBIA 56 (referral does not constitute an opinion whether the appeal is proper under Part 62); Deardorff, 18 IBIA 411 (referral does not constitute an opinion whether appellant has standing under Part 62).

In the present case, Appellants attempt to escape the reach of subsection 4.330(b) by arguing that this “is a reorganization/voting participation entitlement case, not an enrollment case.” Appellant’s Opening Brief on Jurisdiction (Opening Brief) at 1. Appellants argue that the Tribe itself previously denied that it had “disenrolled” them, and instead characterized the action as having simply removed their names from the tribal rolls.

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4/ Of course, regardless of subsection 4.330(b), the Board lacks jurisdiction to directly review enrollment (or other) actions by Indian tribes. See Marquez v. Bureau of Indian Affairs, 37 IBIA 99 (2002); Johnson v. Muskogee Area Director, 30 IBIA 38 (1996). The effect of subsection 4.330(b) is to preclude Board review of BIA actions in tribal enrollment disputes.

Appellants also contend that this appeal cannot be characterized as a disenrollment matter “as the Tribe is still in the process of tribal reorganization and a Tribal Constitution defining membership criteria has yet to be adopted and the Tribal Council has adopted no laws governing enrollment.” Appellant’s Reply Brief at 7.

Relying on Alan-Wilson v. Sacramento Area Director, 30 IBIA 241 (1997), Appellants argue that the Board should assume jurisdiction in this case “to preserve the appellants’ rights to participate in the reorganization of the Tribe pursuant to the terms of the Scotts Valley restoration order by declaring that the Bureau should intervene to ensure that Guidiville is organized by those individuals entitled to do so.” Opening Brief at 9-10. Appellants contend that “an [Indian Reorganization Act] Tribal Constitution is in the final stages of review at the BIA and \* \* \* a Secretarial Election on this Constitution has been called for by the current Interim Tribal Council.” Id. at 3. Thus, according to Appellants, the Board must order BIA to intervene in order to determine “who is entitled to participate in the reorganization of the Tribe.” Id.

Appellants focus on the purported consequences of the Tribe’s action and of BIA’s allegedly improper refusal to intervene — Appellants’ inability to participate in the Tribe’s reorganization. But this is, at its core, a tribal enrollment dispute. In their September 2, 2003 letter to the Regional Director, Appellants characterized the Tribal Council’s action no fewer than 25 times as a “disenrollment” decision, or as “disenrolling” or having “disenrolled” Appellants. Moreover, they sought to have the Regional Director intervene, decline to recognize the Tribe’s disenrollment action, and declare that they are entitled to membership for purposes of tribal organization or reorganization and voting on a constitution. <sup>5/</sup> Semantics aside, the subject matter of both the tribal and BIA action clearly is enrollment. Appellants’ attempt to cast the dispute as something else in order to obtain Board jurisdiction is as unconvincing as the Tribe’s own earlier attempt to describe its actions as simply removing Appellants’ names from the tribal roll, instead of disenrolling them.

We also reject Appellants’ argument that there can be no enrollment dispute because there is no constitution or any enrollment ordinance. The fact that the Tribe may not have voted on a Constitution or enacted an enrollment ordinance does not alter the fact that the Tribe took an enrollment action and that Appellants have requested BIA intervention in the enrollment dispute. Even assuming that Appellants are correct on the merits that they are entitled, as a matter of federal law, to participate and vote as members of the Tribe in

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<sup>5/</sup> The Regional Director’s decision indicates that BIA does not consider two draft constitutions, one dated 1988 and the other 2003, as having legal effect.

reorganization, and that the Tribe's action illegally has prevented them from doing so, the dispute is still an enrollment dispute.

Appellants read the Board's decision in Alan-Wilson too broadly with respect to the scope of the Board's jurisdiction. In Alan-Wilson, the issue of Board jurisdiction was never raised. Therefore, the decision cannot be read as reaching any holding on jurisdiction or as controlling this appeal.

It is true that the Board has assumed jurisdiction, without discussing 43 C.F.R. § 4.330(b), in several cases in which enrollment issues were present. See, e.g., Cahto Tribe of the Laytonville Rancheria v. Pacific Regional Director, 38 IBIA 244 (2002) (vacating a BIA decision which declined to recognize a tribal disenrollment action, and finding that BIA lacked jurisdiction under the circumstances to render a decision); Alan-Wilson, Sr. v. Sacramento Area Director, 30 IBIA 241 (1997) (vacating a BIA decision withdrawing recognition of a tribal council, and involving membership entitlement issues); United Keetoowah Band of Cherokee Indians in Oklahoma v. Muskogee Area Director, 22 IBIA 75 (1992) (affirming a BIA decision declining to recognize in part the results of a tribal election tainted by ICRA violations involving enrollment). On the other hand, in Potter v. Acting Deputy Assistant Secretary - Indian Affairs (Operations), 10 IBIA 33 (1982), the Board dismissed an appeal from a BIA decision denying an application for a grazing privilege allocation, after finding that the underlying issue in the case was a tribal enrollment dispute and that the Board lacked jurisdiction to consider the appeal. 6/

We need not decide the precise scope of subsection 4.330(b)'s limitation on the Board's jurisdiction in this case. Fairly characterized, this is a tribal enrollment dispute that we conclude falls within the scope of that subsection and therefore falls outside the jurisdiction of the Board. Accordingly, we refer this appeal to the Assistant Secretary - Indian Affairs for consideration, as appropriate. 7/

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6/ We recognize that Appellants also asked BIA to suspend its P.L. 93-638 grants to the Tribe if they are not reinstated as members. Sept. 2, 2003 Letter from Appellants to Regional Director at 3. We do not think, however, that simply by requesting particular relief — a request on which BIA took no action — Appellants can change the primary nature of this dispute.

7/ We resolve this appeal based solely on the regulatory restriction on the Board's jurisdiction, and express no opinion on other jurisdictional issues, if any, that may be considered by the Assistant Secretary.

### Conclusion

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. §4.1, the Board dismisses this appeal for lack of jurisdiction and refers the matter to the Assistant Secretary - Indian Affairs.

I concur:

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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// original signed  
Amy B. Sosin  
Acting Administrative Judge